

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7

LGI Energy Solutions, Inc.,

Bky. Case No. 09-40665-RJK

and

LGI Data Solutions Company, LLC,

Bky. Case No. 09-40666-RJK

Debtors.

(Substantively consolidated cases)

**TRUSTEE'S OBJECTION TO THE MOTION FOR RELIEF FROM STAY FILED BY
DEAN AND KELLY LEISCHOW AND FEDERAL INSURANCE COMPANY**

1. John R. Stoebner, trustee of LGI Data Solutions Company LLC and trustee of LGI Energy Solutions, Inc., submits this objection to the Motion for Relief from Stay filed by Dean and Kelly Leischow and Federal Insurance Company.

2. This matter is set for hearing at 2:00 P.M. on June 16, 2011 in Courtroom No. 8W at the United States Courthouse, 300 South 4th Street Minneapolis Minnesota 55415.

3. The Trustee objects to this motion for the reasons set forth below:

- a. The policy and proceeds are property of the bankruptcy estate;
- b. Dean and Kelly Leischow are not entitled to priority in payment from the proceeds of the policy.
- c. Leischows are requesting defense costs with respect to the Trustee's suit against them in Adversary Proceeding No. 11-4041. Absent an agreement with the Trustee, the Trustee is not amendable to the relief requested whereby the Leischows will have their defense costs paid by Federal.

Wherefore, John R. Stoebner respectfully requests the entry of the attached proposed Order denying the relief requested by Leischows and Federal.

LAPP, LIBRA, THOMSON, STOEbNER
& PUSCH, CHARTERED

Dated: June 10, 2011

/e/ Rosanne H. Wirth
Rosanne H. Wirth (Atty # 0137479)
John R. Stoebner (Atty # 140879)
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402
(612) 338-5815

Attorneys for John R. Stoebner, Trustee

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**UNSWORN DECLARATION OF ROSANNE H. WIRTH IN OPPOSITION TO
MOTION FOR RELIEF FROM STAY**

1. I am an attorney with the law firm of Lapp, Libra, Thomson, Stoebner and Pusch Chartered, and am one of the attorneys representing John R. Stoebner a Trustee with respect to both of the above Chapter 7 cases. This declaration is submitted in opposition to the Motion for Relief from Stay filed by Dean and Kelly Leischow and Federal Insurance Company.

2. The D&O policy number 8208-8375 issued by Federal Insurance Company is property of the bankruptcy estate. The debtor, LGI Energy Solutions, Inc. is a named insured. The Debtor, LGI Energy Solutions, Inc. paid for the policy and is referred to in the policy as the Parent Corporation and the Insured Organization. The Insureds under the policy include the Parent Corporation. This is not a policy where just the officers and directors are the Insureds.

3. The Trustee submitted various demand letters to Federal Insurance Company and Chubb Insurance Company under the policy including:

- a. Demand Letter dated September 14, 2009. A copy is attached as **EXHIBIT A** to the Unsworn Declaration of Rosanne H. Wirth March 15, 2010 [Doc 101].

- b. Demand Letter dated October 27, 2009. A copy is attached as **EXHIBIT B** to the Unsworn Declaration of Rosanne H. Wirth March 15, 2010 [Doc 101].
 - c. There were also additional demands made prior to the commencement of the bankruptcy proceeding which were incorporated by reference by the Trustee in his demand letters.
4. Leischows are requesting defense costs with respect to the Trustee's suit against them in Adversary Proceeding No. 11-4041. Absent an agreement with the Trustee, the Trustee is not amendable to the relief requested whereby the Leischows will have their defense costs paid by Federal.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Dated: June 10, 2011

/e/ Rosanne H. Wirth
Rosanne H. Wirth (#0137479)
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402
(612) 338-5815

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**TRUSTEE'S MEMORANDUM IN SUPPORT OF TRUSTEE'S OBJECTION TO
MOTION FOR RELIEF FROM STAY FILED BY DEAN AND KELLY LEISCHOW
AND FEDERAL INSURANCE COMPANY**

This Memorandum is submitted in support of the Trustee's Objection to the Motion for Relief from Stay filed by Dean and Kelly Leischow and Federal Insurance Company.

A. Policy No. 8208-8375 and proceeds of the policy are property of the bankruptcy estate.

1. LGI Energy Solutions, Inc. is the named insured under this policy.

See the policy which is attached as **EXHIBIT A** to the Affidavit of Brian Sande [Doc. No. 100].

2. The Trustee has submitted claims on behalf of the estates to Federal Insurance Company.

See the attachments to the Unsworn Declaration of Rosanne H. Wirth dated March 5, 2010 [Doc. No. 101].

3. Case Law.

A somewhat similar situation was presented in In re Petters Co., Inc., 419 B.R.369, (Bankr. D Minn. 2009), where Judge Kishel on page 374 stated that the debtor's ownership

interest in the two D&O liability policies were property of their respective bankruptcy estates.

The Petters case is substantially different than the posture in the present LGI cases. In the Petters case, Doug Kelley, the Trustee of Petters Group Worldwide, LLC (“PGW”) and Peters Company, Inc. (“PCI”) submitted a response to the Motion for Relief from Stay filed by the insurance carriers. The Trustee supported the Motion for Relief from Stay because the Trustee wanted the insurance companies to pay the criminal defense costs of PGW and PCI, which corporations had been charged criminally. A copy of the Trustee’s response is filed in the Petters Company case (BKY No 08-45257) as ECF document number 191 filed on April 2, 2009. In the Petters case, Judge Kishel’s order allowed payment of 75% of the policy limit.

See also In re Metropolitan Mortgage & Securities Co., 325 B.R. 851, 857 (Bankr. E.D. Wash. 2005); and also In re World Health Alternatives, Inc., 369 B.R. 805, 810 (Bankr. D. Del. 2007) (“When a policy covers the debtor and its directors and officers, and there is risk that payment of proceeds to the directors and officers will result in insufficient coverage of the debtor, then the proceeds are property of the estate and any attempts to obtain the proceeds are prohibited under the automatic stay.”).

B. Dean and Kelly Leischow are not entitled to priority in payment under the policy.

1. The Policy Provisions.

There are a number of Coverage Sections provided through Federal, not just the D&O Coverage Section. It is the Trustee’s understanding that the aggregate policy limit for all of these Coverage Sections is \$1,000,000.00. The other Coverage Sections are Employment Practices Liability Coverage Section, Fiduciary Liability Coverage Section, and Crime Coverage Section. Copies of these Coverage Sections are included in **EXHIBIT A** to the Affidavit of Brian Sande [See Doc No. 100]. The Trustee has made demand under each Coverage Section of the policy.

See **EXHIBITS A and B** to the Unsworn Declaration of Rosanne H. Wirth [See Doc. No. 101].

The fact that Federal Insurance Company has agreed to reimburse Dean and Kelly Leischow for their defense costs, under the terms of one of the Coverage Sections, does not give them priority over the Trustee with respect to claims made by the Trustee under the D&O Coverage Section or any other Coverage Section.

2. Dean and Kelly Leischow's claim is subordinated to the estate's interest in the policy.

Any claim that Dean and Kelly Leischow have against the insurance policy should be subordinated to the estate's claim, by reason on the wrongful acts as set forth in the adversary proceeding commenced against Dean Leischow, Kelly Leischow and L&A Finance and Marketing LLP, which adversary proceeding sets forth counts for conversion and a fraudulent transfer of the Debtors' assets in an amount in excess of \$6.1 million. (*See* Complaint in Adv. No. 11-4041 ("Leischow Complaint").

C. The Trustee does not consent.

Leischows are requesting defense costs with respect to the Trustee's suit against them in Adversary Proceeding No. 11-4041. Absent an agreement with the Trustee, the Trustee is not amendable to the relief requested whereby the Leischows will have their defense costs paid by Federal.

CONCLUSION

The Trustee John R. Stoenner respectfully requests that the court deny the Motion for Relief from Stay.

LAPP, LIBRA, THOMSON, STOEBNER
& PUSCH, CHARTERED

Dated: June 10, 2011

/e/ Rosanne H. Wirth

Rosanne H. Wirth (Atty # 0137479)
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402
(612) 338-5815

Attorneys for John R. Stoebner, Trustee

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UNSWORN CERTIFICATE OF SERVICE

I, Danielle E. Bolf, declare under penalty of perjury that on June 10, 2011, I served copies of the following documents: **Trustee's Objection to the Motion for Relief from Stay Filed by Dean And Kelly Leischow and Federal Insurance Company, Unsworn Declaration of Rosanne H. Wirth in Opposition to Motion for Relief from Stay, Trustee's Memorandum in Support of Trustee's Objection to Motion for Relief from Stay Filed by Dean And Kelly Leischow and Federal Insurance Company and proposed Order**

electronically by Notice of Electronic Filing upon all parties who have requested service in these cases by filing the same via ECF with the Bankruptcy Court in the District of Minnesota.

Executed on: June 10, 2011

\e\ Danielle E. Bolf
Danielle E. Bolf, Legal Assistant
Lapp, Libra, Thomson, Stoeber
& Pusch, Chartered
120 South Sixth Street, Suite 2500
Minneapolis, MN 55402
612/338-5815

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ORDER

This matter came before the court on the motion for relief from stay filed by Dean and Kelly Leischow and Federal Insurance Company. The trustee, John R. Stoebner submitted an objection to this motion. Based upon all the files, records and proceedings herein,

IT IS ORDERED:

The motion is denied.

Dated:

Robert J. Kressel
United States Bankruptcy Judge